



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Habitat Conservation Division
James J. Howard Marine
Sciences Laboratory
74 Magruder Road
Highlands, New Jersey 07732

March 10, 2000

Mr. Kevin P. Madden, Director
Office of Pipeline Regulation
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

Re: OPR/DEER/ERC II, Millennium Pipeline Company, L.P.
Docket No. CP98-150-000, § 375.3

Dear Mr. Madden:

This letter is in response to your Environmental Information Request (EIR) regarding potential construction windows in Haverstraw Bay for the subject project. Since the EIR was issued, we have discussed the sensitivity of aquatic resources that use Haverstraw Bay with the New York State Departments of State (DOS), Coastal Management Program (NYCMP) and Environmental Conservation (DEC). We focused on seasonal windows that are appropriate for construction activities proposed in Haverstraw Bay, and are in general agreement with New York State on appropriate dredging windows for Haverstraw Bay. Our conclusion is that a fall working window is preferred. As requested in the EIR, we have appended a list of references used to evaluate suspended sediment impacts and their relationship to resources that use Haverstraw Bay. Copies of specific documents or contact information for individuals consulted are available upon request. Finally, the ecological sensitivity of Haverstraw Bay remains the basis of our opposition to the proposed Millennium Pipeline Company alignment.

Haverstraw Bay has been recognized by NYCMP as one of the most important fish and wildlife habitats in the Hudson River Estuary. This is formally recognized by New York's designation of the area as a Significant Coastal Fish and Wildlife Habitat pursuant to New York State Law and the Federal Coastal Zone Management Act. NOAA concurs with the designation. Many aquatic resources of concern, notably anadromous, estuarine-dependent and certain marine species use and are dependent upon this habitat for critical functions and values, notably spawning, nursery, feeding and overwintering activities. These resources are managed under a variety of federal legislative actions, including the Fish and Wildlife Coordination Act, the Magnuson-Stevens Fishery Conservation and Management Act, the Emergency Striped Bass Act, Coastal Zone Management Act and the Endangered Species Act.



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The NY Coastal Fish and Wildlife rating form and narrative for the state designation of Haverstraw Bay habitat details the basis for this designation, and includes the NYCMP's conclusion that this habitat is irreplaceable. We have and continue to concur with the NYCMP analysis and findings. Since the New York State Department of State already has provided FERC the documentation for site designation, we have not appended a copy to this communication.

Maintenance dredging of all but the smallest projects for Haverstraw Bay should be conducted only between September 1 and November 15 of any calendar year. However, new dredging does not meet the habitat impairment test criteria established by the NYCMP for this site, and we cannot support any construction window for new work. And, as our staff already has indicated to FERC and the project proponents, the selected alignment and installation technique would produce unacceptable and avoidable impacts to aquatic resources including endangered and other special concern species. Instead, an out-of-Bay, less damaging alignment should be pursued if a crossing of the Hudson River is necessary or appropriate. We will evaluate new proposals for crossings outside of the Haverstraw Bay habitat that the project proponents find technically feasible. Those alternatives may include rerouting the pipeline to a more northerly alignment after it exits Bowline power station, accessing Bowline power station with a lateral connection, or terminating the pipeline at Bowline power station and eliminating the Hudson River crossing altogether.

In Haverstraw Bay, aquatic resources would be especially impacted from mid-November through August. Overwintering fish would be vulnerable between approximately November 15 and March 31, and an April through August dredging restriction is needed to protect sensitive age groups of fishery resources. We do not expect that an EFH assessment for this area would conclude that additional **seasonal restrictions** beyond those indicated above are necessary. However, **other mitigative measures** may be required for work scheduled in the September-mid November window. Any such measures under consideration should be discussed in the FERC's analysis of direct, indirect and cumulative impacts, referencing the appropriate species/lifestage(s) to which benefits would accrue. Similarly, if it is FERC's preliminary determination that no additional measures would be necessary, the EFH assessment should state how that conclusion was reached.

With respect to shortnose sturgeon and how we considered our suggested maintenance dredging period for Haverstraw Bay, the topic remains a subject for continued discussions among the FERC, USACE and NMFS. The intent would be to minimize interactions with that species during concentration periods. By limiting maintenance dredging to September through Mid-November, some key habitat uses by shortnose sturgeon would be protected. However, some level of interaction would occur in the proposed maintenance window and must be addressed as part of the Section 7 consultation. We will review the need to adjust the proposed window or make other recommendations or stipulations upon receipt of the Biological Assessment. As indicated in previous correspondence, it is premature for us to make a final

determination regarding shortnose sturgeon, especially since some level of take, as defined by the ESA, appears unavoidable.

I hope that this information is helpful. If you or your staff wishes to discuss this information further, please contact Diane Rusanowsky or Michael Ludwig at (203) 579-7004.

Sincerely,



Stanley W. Gorski
Field Offices Supervisor

cc: COE/NY - Heidi Firstencel (Albany Field Office)
USF&WS - Diane Mann-Klager (Cortland Field Office)
USEPA - Dan Montella (Region 2)
NYSDOS - Steven Resler (NYCMP)
NYSDEC - Margaret Duke (Region 3)
NMFS, PRD - Mantzaris

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